

312829



U.S. Department
of Transportation

Federal Aviation
Administration

DEC 27 2004

Eastern Region
Regional Counsel
Telephone: 718 553-3272
Facsimile: (718) 995-5699

DEPT. OF TRANSPORTATION
DOCKETS
1 Aviation Plaza
Room 561 2005 JAN 25 P 2:30
Jamaica, NY 11434

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hearing Docket

Federal Aviation Administration
800 Independence Avenue, S.W.
Room 926A, AGC-10
Washington, D.C. 20591

RECEIVED

JAN - 5 2005

ATTN: HEARING DOCKET CLERK **HEARING DOCKET**

Re: In the Matter of BTX AIR EXPRESS
Docket No. 2004EA700405

CP05EA0003
2005-20013-1

Enclosed herein please find a copy of a request for hearing and the original and one copy of the FAA's Complaint in the above-entitled action for filing, together with proof of service upon the Respondent.

The FAA requests that the hearing in this matter be held in the Washington DC area, and expects that the hearing will last one day.

Please address all communications for the Federal Aviation Administration to the attention of Jeanine C. Gotimer, Office of the Regional Counsel, 1 Aviation Plaza Room 561 Jamaica, NY 11434.

Sincerely,

Loretta E. Alkalay
Regional Counsel

By:


Jeanine C. Gotimer
Attorney

Enclosures

cc: AEA-700

Regional Counsel for the Eastern Region
Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434

Date

12/13/2004

BTX AIR EXPRESS - 2004EA700405
Subject: Final Notice of Proposed Civil Penalty
Response Attachment

In reply to your Final Notice of Proposed Civil Penalty BTX AIR EXPRESS elects to proceed as indicated by its check mark beside the numbered paragraph below:

1. ☐ BTX AIR EXPRESS hereby submits the amount of the proposed civil penalty with the understanding that an Order Assessing Civil Penalty will be issued in that amount.
2. ☒ BTX AIR EXPRESS hereby requests a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations.

By sending this form to the Federal Aviation Administration, Eastern Region, BTX AIR EXPRESS also hereby certifies that a copy of this form has been filed with the Hearing Docket Clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk).

** Please note that BTX AIR EXPRESS will not be entitled to a hearing if it files this form with the Federal Aviation Administration, Eastern Region, WITHOUT having filed this form or a written request for a hearing with the HEARING DOCKET CLERK.

ATTORNEY/REPRESENTATIVE

Name: _____
Firm: _____
Address: _____
Phone No. _____

FedEx | Ship Manager | Label 7915 0260 9070

Page 1 of 1

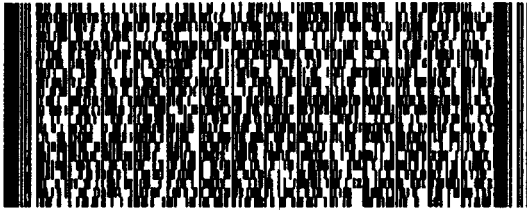
From: Origin ID: (703)433-0280
 Michael Weibel
 BTX AIR EXPRESS
 22580 GLENN DRIVE
 SUITE 10
 STERLING, VA 20164



CL88914040506

SHIP TO: (718)553-3272
 Jeanine C. Gotimer, Esq
 FAA
 1 Aviation Plaza
 Room 561
 Jamaica, NY 11434

BILL THIRD PARTY



Ship Date: 14DEC04
 Actual Wgt: 1 LB
 System#: 2294535/INET2000
 Account#: S *****

REF: IAD66E6700775

RECEIVED

JAN - 5 2005



Delivery Address Bar Code

HEARING DOCKET

EXPRESS SAVER PACKAGE

THU

Deliver By:
 16DEC04

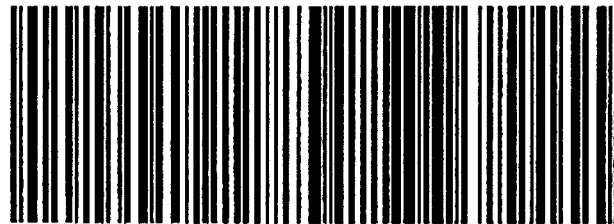
TRK# 7915 0260 9070

FORM
0201

JFK A1

11434 -NY-US

ST FYUA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

FedEx | Ship Manager | Label 7928 0068 4230

Page 1 of 1

From: Origin ID: (703)433-0280
 Michael Weibel
 BTX AIR EXPRESS
 22580 GLENN DRIVE
 SUITE 10
 STERLING, VA 20164



CL80914040000

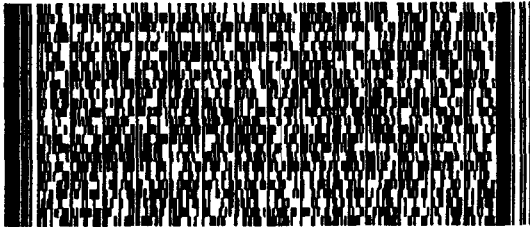
SHIP TO: (718)553-3272 BILL THIRD PARTY
 Federal Aviation Administration
 HEARING DOCKET CLERK
 800 Independence Avenue, SW
 Room 924A
 Washington, DC 20591

Ship Date: 14DEC04
 Actual Wgt: 1 LB
 System#: 2294535/INET2000
 Account#: S *****

REF: IAD66E6700774



Delivery Address Bar Code

**EXPRESS SAVER PACKAGE****THU**

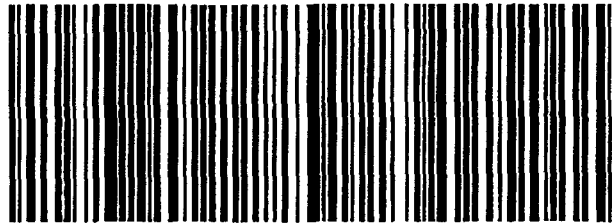
Deliver By:
 16DEC04

TRK# 7928 0068 4230

FORM
0201

IAD A1

20591 -DC-US

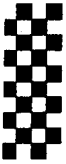
19 WASA

Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



12/14/04 - MP -
Treat
as Releaseable

Tuesday, December 14, 2004

Jeanine C. Gotimer, Esq.
Federal Aviation Administration
1 Aviation Plaza, Rm. 561
Jamaica, NY 11434
PH#718-553-3272 FX#718-995-5699

By Fax and Certified Mail

RE: Docket No. 2004-EA-700405, Dated August 27, 2004

Dear Jeanine:

We hereby formally request our case be transferred to Washington, DC as I will be handling all matters.

Additionally, we require the below listed findings to be forwarded to my address listed below.

1. Investigation of FAA Special Agent Nick Peterson
2. Any other investigative notes by the FAA
3. All findings by the United Kingdom's CAA

Sincerely,

Michael Weibel
Managing Director - Washington, DC
BTX AIR EXPRESS Air Express
22580 Glenn Drive, Suite 10
Sterling, VA 20164 USA
Phone 703-433-0280
Fax 703-935-0510

ATTACHMENT:

Formal hearing request
FEDEX Air Waybill to DC
FEDEX Air Waybill to Jamaica

CC:

Ross Bacarella - BTX Air Express
Stephanie Payne - Air Liquide

Regional Counsel for the Eastern Region
Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434

Date

12/13/2004

BTX AIR EXPRESS - 2004EA700405
Subject: Final Notice of Proposed Civil Penalty
Response Attachment

In reply to your Final Notice of Proposed Civil Penalty BTX AIR EXPRESS elects to proceed as indicated by its check mark beside the numbered paragraph below:

1. ☐ BTX AIR EXPRESS hereby submits the amount of the proposed civil penalty with the understanding that an Order Assessing Civil Penalty will be issued in that amount.
2. ☒ BTX AIR EXPRESS hereby requests a formal hearing in accordance with Section 13.16 of the Federal Aviation Regulations.

By sending this form to the Federal Aviation Administration, Eastern Region, BTX AIR EXPRESS also hereby certifies that a copy of this form has been filed with the Hearing Docket Clerk (Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, S.W., Room 924A, Washington, DC 20591, Attention: Hearing Docket Clerk).

** Please note that BTX AIR EXPRESS will not be entitled to a hearing if it files this form with the Federal Aviation Administration, Eastern Region, WITHOUT having filed this form or a written request for a hearing with the HEARING DOCKET CLERK.

ATTORNEY/REPRESENTATIVE

Name: _____
Firm: _____
Address: _____
Phone No. _____

FedEx | Ship Manager | Label 7915 0260 9070

Page 1 of 1

From: Origin ID: (703)433-0280
Michael Weibel
BTX AIR EXPRESS
22580 GLENN DRIVE
SUITE 10
STERLING, VA 20164



CL809148405000

Ship Date: 14DEC04
Actual Wgt: 1 LB
System#: 2294535/INET2000
Account#: S *****

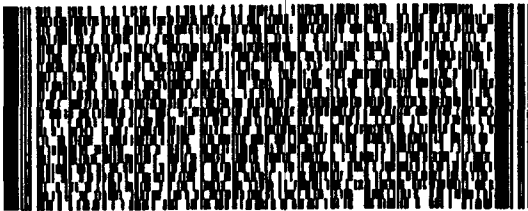
REF: IAD66E6700775



Delivery Address Bar Code

SHIP TO: (718)553-3272
Jeanine C. Gotimer, Esq
FAA
1 Aviation Plaza
Room 561
Jamaica, NY 11434

BILL THIRD PARTY



EXPRESS SAVER PACKAGE

THU

Deliver By:
16DEC04

TRK# 7915 0260 9070

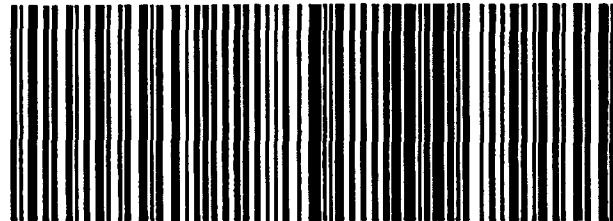
FORM
0201

JFK

A1

11434 -NY-US

ST FYUA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

FedEx | Ship Manager | Label 7928 0068 4230

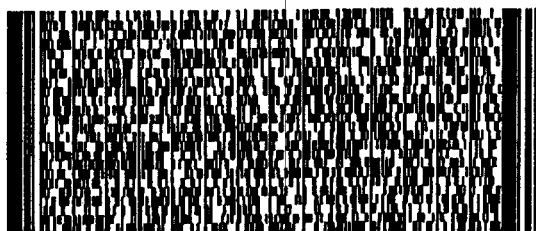
Page 1 of 1

From: Origin ID: (703)433-0280
Michael Weibel
BTX AIR EXPRESS
22580 GLENN DRIVE
SUITE 10
STERLING, VA 20164



CL88914049206

SHIP TO: (718)553-3272 BILL THIRD PARTY
Federal Aviation Administration
HEARING DOCKET CLERK
800 Independence Avenue, SW
Room 924A
Washington, DC 20591



Ship Date: 14DEC04
Actual Wgt: 1 LB
System#: 2294535/INET2000
Account#: S *****

REF: IAD66E6700774



Delivery Address Bar Code

EXPRESS SAVER PACKAGE

THU

Deliver By:
16DEC04

TRK# 7928 0068 4230

FORM
0201

IAD

A1

20591 -DC-US

19 WASA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.



Privileged & Confidential



12/14/04 - MP -
Treatable
as Releaseable

Tuesday, December 14, 2004

Jeanine C. Gotimer, Esq.
Federal Aviation Administration
1 Aviation Plaza, Rm. 561
Jamaica, NY 11434
PH#718-553-3272 FX#718-995-5699

By Fax and Certified Mail

RE: Docket No. 2004-EA-700405, Dated August 27, 2004

Dear Jeanine:

We hereby formally request our case be transferred to Washington, DC as I will be handling all matters.

Additionally, we require the below listed findings to be forwarded to my address listed below.

1. Investigation of FAA Special Agent Nick Peterson
2. Any other investigative notes by the FAA
3. All findings by the United Kingdom's CAA

Sincerely,

Michael Weibel
Managing Director - Washington, DC
BTX AIR EXPRESS Air Express
22580 Glenn Drive, Suite 10
Sterling, VA 20164 USA
Phone 703-433-0280
Fax 703-935-0510

ATTACHMENT:

Formal hearing request
FEDEX Air Waybill to DC
FEDEX Air Waybill to Jamaica

CC:

Ross Bacarella - BTX Air Express
Stephanie Payne - Air Liquide

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

In the Matter of BTX AIR EXPRESS

2004EA700405
Judge Not Assigned

COMPLAINT

The Federal Aviation Administration (FAA), by counsel, hereby files its Complaint, pursuant to Rule 208 of the Rules of Practice (14 C.F.R. 13.208), and states as follows:

I

Respondent, BTX AIR EXPRESS, was advised through a Final Notice of Proposed Civil Penalty that the FAA proposed to assess a civil penalty in the amount of \$40,000. On December 14, 2004, Respondent submitted a written demand for a hearing.

II

1. On or about February 23, 2004, BTX Air Express (BTX) knowingly offered a shipment containing hazardous materials (the shipment) for transportation by air.
2. BTX, as Indirect Air Carrier for Air Liquide America, LP, offered the shipment for transportation aboard US Airways Flight 196, a passenger carrying flight, on or about February 23, 2004, from Washington-Dulles International Airport (IAD) to Manchester International Airport under Air Waybill No. 037-1650-5941.
3. Air Waybill No. 037-1650-5941 showed a shipment of hazardous material being offered by Air Liquide America LP, 821 Chesapeake Drive, Cambridge, MD 21613 USA for transportation to the consignee, Ai Liquide-Cal Gaz International, c/o TQ Express Unit 7, Building 301, Cargo Centre, Manchester Airport, M90 5TQ, UK.

4. The shipment consisted of thirty three (33) pieces of Compressed Gas, nos, UN1956 that was properly prepared and declared as hazardous material and one (1) package of Compressed gas, flammable, nos (Butane, Nitrogen) UN1954, Class 2.1 that was not properly declared.
5. Specifically, the package of Compressed gas, flammable, nos (Butane, Nitrogen) UN1954, Class 2.1 was not declared on either Air Waybill No. 037-1650-5941 or any paperwork accompanying Air Waybill No. 037-1650-5941, including a Shipper's Declaration of Dangerous Goods.
6. Compressed gas, flammable, nos (Butane, Nitrogen) is classified as a hazardous material under Section 172.101 of the Department of Transportation Hazardous Materials Regulations (HMR) (49 C.F.R. 172.101).
7. Column 9a of the §172.101 Table indicates that Compressed gas, flammable, nos (Butane, Nitrogen) is forbidden for transportation aboard passenger-carrying aircraft.
8. By virtue of the above allegations, on or about February 23, 2004, BTX knowingly offered for air transportation aboard a passenger carrying aircraft, a shipment containing hazardous materials that is forbidden by Column 9a of the §172.101 Table for transportation aboard a passenger-carrying aircraft.
9. The package of Compressed gas, flammable, nos (Butane, Nitrogen) UN1954, Class 2.1 within the shipment was contained within a fiberboard box that was on a pallet with the thirty three (33) pieces of properly prepared and declared hazardous materials wrapped in shrink wrap bearing no identification markings, and no labels.
10. The fiberboard box containing the package of Compressed gas, flammable, nos (Butane, Nitrogen) UN1954, Class 2.1 was properly marked and labeled and packaged, however, the markings and labels were not visible through the shrink wrap.
11. The undeclared forbidden package of Compressed gas, flammable, nos (Butane, Nitrogen) UN1954, Class 2.1 within the shipment was discovered by US Airways at Manchester International Airport when they broke down the overpacked pallet.
12. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air without shipping papers that included the proper

shipping name of each hazard material; the hazard class of each hazardous material; and the assigned identification number of each hazardous material.

13. By virtue of the above allegations, on or about February 23, 2004, BTX offered a shipment that is prohibited for transportation aboard a passenger carrying flight when the words "Cargo aircraft only" were not entered after the basic description on the shipping paper.
14. By virtue of the above allegations, on or about February 23, 2004, BTX offered a shipment of hazardous material for transportation aboard a passenger carrying flight when the technical name of the hazardous material was not entered in parentheses in association with the basic description.
15. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air when it failed to certify that each hazardous material was in accordance with the HMR (49 C.F.R. 171 et seq.) by printing the certification set forth in Sections 172.204(a) or 172.204(c)(1) of the HMR [49 C.F.R. 172.204(a) or 172.204(c)(1) on the shipping papers.
16. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air without adding to the certification, required by Sections 172.204(a) or (c)(1) of the HMR [49 C.F.R. 172.204(a) or (c)(1)] the following statement: "This shipment is within the limitations prescribed for passenger aircraft/cargo aircraft only (delete non-applicable)."
17. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air without providing two (2) copies of the required shipper's certification for shipment.
18. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air in an overpack that was not marked with the proper shipping name and identification number.
19. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air in an overpack that was not labeled as required by the DOT HMR and when markings and labels representative of each hazardous material in the overpack were not visible through the overpack.

20. By virtue of the above allegations, on or about February 23, 2004, BTX offered the above-described shipment of hazardous materials for transportation by air in an overpack that was not marked with a statement indicating that the inside (inner) packages comply with prescribed specifications.

III

By reason of the foregoing facts and circumstances, Respondent violated the following section(s) of the Department of Transportation Hazardous Materials Regulations:

1. Section 171.2(a), which states that no person may offer or accept a hazardous material for transportation in commerce unless that person complies with subpart G of part 107 of this chapter, and the hazardous material is properly classed, described, packaged, marked, labeled, and in condition for shipment as required or authorized by this subchapter (including Sections 171.11, 171.12, and 176.11).
2. Section 172.200(a), which states that, except as otherwise provided in this subpart, each person who offers a hazardous material for transportation shall describe the material on the shipping papers in the manner required by this subpart.

3. Section 172.202(a)(1), which states that the shipping description of a hazardous material on the shipping paper must include the proper shipping name prescribed for the material in column 2 of the §172.101 Table (49 C.F.R. 172.101).
4. Section 172.202(a)(2), which states that the shipping description of a hazardous material on the shipping paper must include the hazard class prescribed for the material as shown in column 3 of the §172.101 table (49 C.F.R. 172.101).
5. Section 172.202(a)(3), which states that the shipping description of a hazardous material on the shipping paper must include the identification number as prescribed in §172.101 for the material as shown in column 4 of the Table (49 C.F.R. 172.101).
6. Section 172.202(a)(4), which states that the shipping description of a hazardous material on the shipping paper must include the packing group in Roman numerals as prescribed for the material in column 5 of the Table (49 CFR §172.101).

7. Section 172.203(f), which states that when a package containing a hazardous material is offered for transportation by air and this subchapter prohibits its transportation aboard passenger-carrying aircraft, the words "Cargo aircraft only" must be entered after the basic description.
8. Section 172.203(k), which states that unless otherwise excepted, if a material is described on a shipping paper by one of the proper shipping names listed in paragraph (k)(3) of this section, the technical name of the hazardous material must be entered in parentheses in association with the basic description. For example "Corrosive liquid, n.o.s., (Caprylyl chloride), 8, UN 1760, II", or "Corrosive liquid, n.o.s., 8, UN 1760, II (contains Caprylyl chloride)". The word "contains" may be used in association with the technical name, if appropriate. For organic peroxides which may qualify for more than one generic listing depending on concentration, the technical name must include the actual concentration being shipped or the concentration range for the appropriate generic listing. For example, "Organic peroxide type B, solid, 5.2, UN 3102 (dibenzoyl peroxide, 52-100%)" or "Organic peroxide type E, solid, 5.2, UN 3108 (dibenzoyl peroxide, paste, <52%".
9. Section 172.204(a), which states that, except as provided in paragraph B and C of this section, each person who offers hazardous material for

transportation shall certify that the material is offered for transportation in accordance with the Hazardous Materials Regulations by printing on the shipping paper containing the required shipping description the certification contained in §172.204(a)(1) or the certification containing the language contained in §172.204(a)(2).

10. Section 172.204(c)(2), which states that each person who offers hazardous materials to an aircraft operator for transportation by air shall provide two (2) copies of the required shipper's certification.
11. Section 172.204(c)(3), which states that each person who offers for transportation by air a hazardous material authorized for air transportation shall add to the certification required by 49 C.F.R. §172.204 the following statement: This shipment is within the limitations prescribed for passenger aircraft/cargo aircraft only (delete nonapplicable).
12. Section 172.400(a), which states that except as specified in § 172.400a, each person who offers for transportation or transports a hazardous material in any of the following packages or containment devices, shall label the package or containment device with labels specified for the material in the § 172.101 Table.

13. Section 172.404(a), which states that when hazardous materials having different hazard classes are packed within the same packaging, or within the same outside container or overpack as described in §173.25 and authorized by §173.21 of this subchapter, the packaging, outside container or overpack must be labeled as required for each class of hazardous material contained therein.
14. Section 173.1(b), which states that a shipment of hazardous materials that is not prepared in accordance with the Hazardous Materials Regulations may not be offered for transportation by air, highway, or water.
15. Section 173.22(a)(1)&(2), which states that except as otherwise provided in this part, a person may offer a hazardous material for transportation in a packaging or container required by this part only in accordance with the following: (1) The person shall class and describe the hazardous material in accordance with parts 172 and 163 of this subchapter, and (2) The person shall determine that the packaging or container is an authorized packaging, including part 173 requirements, and that it has been manufactured, assembled, and marked in accordance with: (i) §173.(7)(a) and parts 173, 178, or 179 of this subchapter; (ii) A specification of the Department in effect

at the date of manufacture of the packaging and container; (iii) National or international regulations based on the UN Recommendations on the Transport of Dangerous Goods, as authorized in §173.24(d)(2); (iv) An approval issued under this subchapter; or (v) An exemption issued under subchapter A of this chapter.

16. Section 173.25(a), which states that authorized packages containing hazardous materials may be offered for transportation in an overpack as defined in §171.8 of this subchapter, if all of the following conditions are met: (1) The package meets the requirements of §§173.21 and 173.24 of this subchapter. (2) The overpack is marked with the proper shipping name and identification number, and labeled as required by this subchapter for each hazardous material contained therein unless markings and labels representative of each hazardous material in the overpack are visible. (3) Each package subject to the orientation marking requirements of §172.312 of this subchapter is packed in the overpack with its filling holes up and the overpack is marked with package orientation marking arrows on two opposite vertical sides of the overpack with the arrows pointing in the correct direction of orientation. (4) The overpack is marked with a statement indicating that the inside (inner) packages comply with prescribed specifications when specification packagings are required, unless specification markings on the

inside packages are visible. (5) Packages containing Class 8 (corrosive) materials in Packing Group I or Division 5.1 (oxidizing) materials in Packing Group I may not be packed with any other materials.

17. Section 173.27(b)(1), which states that when Column 9a of the §172.101 Table indicates that a material is "Forbidden", that material may not be offered for transportation or transported aboard passenger-carrying aircraft.


IV

1. Pursuant to 49 U.S.C. §5123, Respondent is subject to a civil penalty of at least \$250 but not more than \$27,500 for each of the violations alleged.
2. Under the facts and circumstances of this case, a civil penalty of \$40,000 is appropriate.

WHEREFORE, the FAA, by counsel, respectfully requests that the Administrative Law Judge enter an order that Respondent be assessed a civil penalty in the amount of \$40,000.

Respectfully submitted,

Loretta E. Alkalay
Regional Counsel

By: 
Jeanine C. Gotimer
Attorney

Federal Aviation Administration
1 Aviation Plaza
Room 561
Jamaica, NY 11434
718 553-3272
(718) 995-5699

NOTE:

The Rules of Practice for this proceeding are set forth in Part 13, Subpart G, of the Federal Aviation Regulations (14 C.F.R. Part 13).

The Rules of Practice provide that Respondent must file a written answer to this Complaint, or a written Motion to Dismiss if appropriate, not later than 30 days after the date shown on the Certificate of Service. A general denial is deemed a failure to file an answer (Section 13.209(e)).

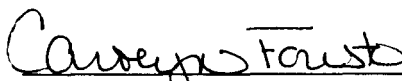
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint has been placed this date in the United States mail, postage prepaid, by Certified Mail - Return Receipt Requested addressed as follows:

Michael Weibel, Managing Director
BTX Air Express
22580 Glenn Drive
Sterling, VA 20164

Hearing Docket (Original and one copy)
Federal Aviation Administration
800 Independence Avenue, SW
Room 926A, AGC-10
Washington, DC 20591

Date: DEC 27 2004


Carolyn Foresto
Legal Technician
Federal Aviation Administration
Office of Regional Counsel
1 Aviation Plaza
Room 561
Jamaica, NY 11434

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

In the Matter of BTX AIR EXPRESS

2004EA700405
Judge Not Assigned

NOTICE OF APPEARANCE

Complainant, Federal Aviation Administration, hereby notifies the United States Department of Transportation, Office of Hearings, and the Respondent, pursuant to 14 C.F.R. §13.204(b), that it shall be represented in the above-stated action by the following attorney:

Jeanine C. Gotimer
Federal Aviation Administration
Office of Regional Counsel
1 Aviation Plaza
Room 561
Jamaica, NY 11434
Telephone: 718 553-3272
Facsimile: (718) 995-5699

All communications, notices, pleadings or documents are respectfully requested to be forwarded as follows:

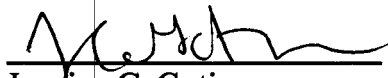
Jeanine C. Gotimer
Federal Aviation Administration
Office of Regional Counsel
1 Aviation Plaza
Room 561

Jamaica, NY 11434
Telephone: 718 553-3272
Facsimile: (718) 995-5699

Respectfully submitted,

Loretta E. Alkalay
Regional Counsel

By:


Jeanine C. Gotimer
Attorney

Dated:

12/26/04

CERTIFICATE OF SERVICE

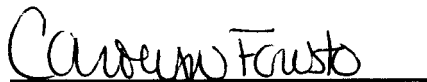
I hereby certify that on this day copies of the foregoing Notice of Appearance were placed in the United States mail, postage prepaid, Certified Mail - Return Receipt Requested addressed as follows:

Michael Weibel, Managing Director
BTX Air Express
22580 Glenn Drive
Sterling, VA 20164

Hearing Docket (Original and one copy)
Federal Aviation Administration
800 Independence Avenue, S.W.
Room 926A, AGC-10
Washington, D.C. 20591

Date:

12/27/04



Carolyn Foresto
Legal Technician
Federal Aviation Administration
Office of Regional Counsel
1 Aviation Plaza
Room 561
Jamaica, NY 11434